

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF WASHINGTON

4
5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

8 TONY DARVIS CALHOUN,

9 Defendant.

10 Nos. CR-97-0015-FVS
11 CR-97-0061-FVS

12 ORDER GRANTING, IN PART,
13 DEFENDANT'S MOTION FOR
14 REDUCTION OF SENTENCE
15 PURSUANT TO 18 U.S.C. §
16 3582(c)

17 **THIS MATTER** came before the Court for a hearing on Defendant's
18 "Motion To Modify Sentence Pursuant To Title 18 U.S.C. §3582(c)(2) And
19 United States Sentencing Guideline §1b1.10(c)." (Ct. Rec. 60 (97-cv-
20 0015); Ct. Rec. 32 (97-cv-0061)). Assistant United States Attorney
21 Robert A. Ellis represents the United States, and Defendant is
22 represented by Tracy Staab. Defendant requests an order reducing his
23 sentence from 188 months to 151 months based on the application of the
24 retroactive amendment to the crack cocaine guidelines.

25 **BACKGROUND**

26 On February 4, 1997, the Grand Jury returned an indictment
against Defendant in Cause No. CR-97-0015-FVS. Defendant was charged
with the distribution of approximately 9 grams of cocaine base on
November 13, 1996, a violation of 21 U.S.C. § 841. On March 28, 1997,
in Cause No. CR-97-0061-FVS, Defendant was charged by Information with

1 being a felon in possession of a firearm at the time of his arrest on
2 February 11, 1997, in violation of 18 U.S.C. § 922(g).

3 On March 28, 1997, Defendant entered guilty pleas to both
4 charges. The entry of guilty pleas was pursuant to a written plea
5 agreement. In the agreement, the United States agreed to recommend "a
6 sentence of incarceration within the guideline range as determined by
7 the court . . ." Following entry of guilty pleas, a presentence
8 investigation report was prepared in which the guideline calculations
9 were similar to the parties' plea agreement.

10 Prior to sentencing, the Court informed the parties it believed
11 the Career Offender provisions were applicable. Both attorneys
12 acknowledged the error. The revised presentence investigation report
13 included calculations based upon the Career Offender guideline. The
14 United States then advised defense counsel it would not oppose a
15 motion to withdraw the guilty pleas. The sentencing hearing
16 nevertheless went forward on August 11, 1997. At the hearing, the
17 Court determined the Career Offender Guideline was indeed applicable
18 and that the guideline range was 188 to 235 months. The Court imposed
19 a term of incarceration of 188 months.

20 **DISCUSSION**

21 The amended version of U.S.S.G. § 1B1.10 found in the *Supplement*
22 *To The 2007 Guidelines Manual*, effective March 3, 2008, provides in
23 relevant part:

24 (a) Authority.-

25 (1) In General.- In a case in which a defendant is
26 serving a term of imprisonment, and the guideline
range applicable to that defendant has subsequently
been lowered as a result of an amendment to the

1 Guidelines Manual listed in subsection (c) below,
2 the court may reduce the defendant's term of
3 imprisonment as provided by 18 U.S.C. §3582(c)(2).
As required by 18 U.S.C. §3582(c)(2), any such
reduction in the defendant's term of imprisonment
shall be consistent with this policy statement.

4 The court is to determine the amended guideline range that would have
5 been applicable to the Defendant if the amendment to the guideline had
6 been in effect at the time the defendant was sentenced. U.S.S.G. §
7 1B1.10(b)(1). In general, the court is not to reduce the term of
8 imprisonment to a term that is less than the minimum of the amended
9 guideline range. U.S.S.G. § 1B1.10(b)(2)(A).

10 Defendant contends that, based on Amendment 706 to the
11 Guidelines, his Total Adjusted Offense Level should be reduced from 31
12 to 29. Defendant argues that with this reduction, and based on a
13 Criminal History Category of VI, Defendant's amended guideline range
14 would be 151 to 188 months, as opposed to the prior range of 188 to
15 235. Defendant requests he be given the minimum term available under
16 the amended guideline range (151 months).

17 On September 18, 2008, counsel for Defendant filed a "Stipulated
18 Reply" in this matter indicated that, following a discussion with the
19 Government, the parties "stipulate that the retroactive amendment to
20 the crack cocaine guidelines should apply in this case, and Mr.
21 Calhoun's sentence of 188 months should be reduced by eight months to
22 180 months." (Ct. Rec. 73; (97-cr-0015)).

23 Taking into considering the information before the Court, and
24 based on the agreement of the parties, **IT IS HEREBY ORDERED** that
25 Defendant's "Motion To Modify Sentence Pursuant To Title 18 U.S.C.
26 §3582(c)(2) And United States Sentencing Guideline §1b1.10(c)" (Ct.

1 **Rec. 60** (97-cv-0015); **Ct. Rec. 32** (97-cv-0061)) are **GRANTED, in part.**
2 Defendant's term of imprisonment is reduced to 180 months. All other
3 terms of the original sentence remain unchanged.

IT IS FURTHER ORDERED as follows:

1. Defendant's duplicative motions for the reduction of his sentence pursuant to 18 U.S.C. § 3582(c) (**Ct. Rec. 62** (97-cv-0015); **Ct. Rec. 34** (97-cv-0061)) are **DENIED**, as duplicative.

2. All other pending motions in the above captioned cases, in particular (**Ct. Rec. 36** and **Ct. Rec. 37** (97-cv-0061)) are **DENIED, as moot.**

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this order and furnish copies to Defendant, to counsel, to the U.S. Probation Office (Spokane), to the Director of the Bureau of Prisons (Federal Bureau of Prisons, Central Office, 320 First St., NW, Washington D.C. 20534), and to the United States Sentencing Commission (One Columbus Circle, N.E., Suite 2-500, South Lobby, Washington, D.C. 20002-8002).

DATED this 22nd day of September, 2008.

S/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge